IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner
Versus
VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Mrs. N. Alvares, Amicus Curiae.
Mr. M. Salkar, Addl. Government Advocate for Respondent Nos. 2 and 3.

Coram:- A. S. OKA &
F. M. REIS, JJ.

Date:- 12th August, 2010

P.C.

We have heard the learned Amicus Curiae. We have also heard the learned Additional Government Advocate. We have perused the earlier orders passed by this Court.

2. The Petitioner's letter dated 21st August, 2007 was ordered to be registered as PIL Writ Petition. The Petitioner has raised issue of environmental degradation caused by illegal cutting of hills. This Court has issued various directions from time to time. The order dated 8th September, 2008 passed by this Court records that the learned Amicus Curiae has handed over a note containing her suggestions on the measures to prevent illegal hill cutting and to restore hills that are illegally cut. This Court recorded the statement of the State Government that the suggestions in the note will be duly examined by the State Government and appropriate decision would be taken in compliance.

3. As far as first part of the measures to prevent illegal hill

cutting is concerned, the learned Additional Government Advocate pointed out that the Government of Goa has constituted one flying squad each for both the Districts to take instant action against illegal cutting of sloppy land/filling of low lying land. The learned Additional Government Advocate has tendered on record a press note issued by the Town and Country Planning Department of Government of Goa which lays down as to how the flying squad will work. It is stated that a toll free number has been provided to the members of the public to contact the concerned officers attached to the flying squad.

4. The learned Additional Government Advocate stated that a wide publicity has been given to the toll free number. He has handed over a chart as regards the details of the complaints received by the flying squad from 26th May, 2010 onwards. The chart also indicates the action taken on the basis of the various complaints made by the complainants.

5. The learned Amicus Curiae has made certain suggestions. The first suggestion is that the flying squad must take calls from the members of public on week ends and public holidays. Therefore, a cell phone number of the appropriate officers attached to the flying squad should be made available to the members of public. Another suggestion is that to make the work of the flying squad more effective, the stop work order of the flying squad should be issued in writing. These suggestions will have to be accepted. The learned Amicus Curiae is right in suggesting that if the complainant makes a request for a copy of the stop work order or notice, the same will be made available to the complainant.

6. After the stop work order is issued by the flying squad, the Town and Country Planning Department has to examine the matter.

To ensure that the stop work order or notice of the flying squad becomes effective, if the Town and Country Planning Department desires to allow the work to be resumed, an order to that effect should be passed by the Town and Country Planning Department in writing and the stop work order/notice will continue to be operative till such order is passed by the Town and Country Planning Department.

7. There are various instances of illegal cutting of hills. We, therefore, find that there is a need for the State Government to take appropriate measures for stabilization of such hills. The suggestions of the learned Amicus Curiae have already been submitted and the State Government has to take appropriate decision. We find that in view of an interim order passed by this Court, a committee has been constituted by the State Government which is entrusted with the work of framing a policy on hill cutting. The committee is also required to suggest measures to prevent hill cutting and the measures to take immediate remedial action on illegal hill cutting. Notwithstanding the disposal of this Writ Petition, the committee will continue to function till the task assigned to committee is carried out.

8. Hence, we dispose of the Petition by issuing the following directions :-

(A) We direct that the suggestions made by the learned Amicus Curiae on 5th September, 2008 which are on record of this Writ Petition shall be considered by the committee appointed under the orders of this Court.The committee may take assistance of the learned Amicus Curiae. The committee shall continue to function till the measures suggested by the learned Amicus Curiae are considered and appropriate recommendations are made by the committee to the State Government. The committee shall submit its detailed recommendations as per the terms of reference incorporated in the

order dated 21st January, 2010 by which the committee was constituted. The committee shall endeavour to submit recommendations to the State Government within a period of six months from today.

(B) After the recommendations are submitted by the committee, the State Government shall take decision as expeditiously as possible.

(C) We accept the statement made by the learned Additional Government Advocate regarding the constitution of the flying squad which is a part of the press note handed over to this Court.

(D) We direct that the arrangements should be made to ensure that the flying squad can be contacted by the members of public at weekends and on public holidays. The flying squad shall be available for taking action even on public holidays. A cell phone number shall be notified by the State Government on which the members of public can contact the concerned officers of the flying squad at the weekends and on public holidays. Wide publicity shall be given to the toll free number as well as the cell phone number so that the members of public can contact the flying squad.

(E) We direct that whenever a show cause notice/stop work order issued by the flying squad, the same shall be in writing. The notice/order will contain in brief the nature of hill cutting activity noted by the flying squad. If a request made, a true copy of the notice/order shall be made available to the concerned complainant.

(F) It shall be the duty of the Town and Country Planning Department to immediately examine the matter after the stop work order/notice is issued by the flying squad. We direct that such notice

issued by the flying squad will remain operative till the Town and Country Planning Department examines the case and allows the resumption of the activities by passing an order in writing.

(G) We direct that the committee formed by the State Government will consider the measures which are required to be taken for making the functioning of the flying squad more effective.

(H) Before we dispose of the Petition with the aforesaid directions, we record our appreciation of the services rendered by Ms. Norma Alvares, the learned Amicus Curiae.

(I) We dispose of the Petition with aforesaid directions.

A. S. OKA, J.

F. M. REIS, J.

at*

PIL WP 11/2007

Measures to prevent illegal hill cutting and to restore hills that are illegally cut

The Chief Secretary's order dated 13.2.2007 has listed the following steps regarding illegal hill cutting / landfilling:

1. As soon as any violations are noticed or reported (including newspaper reports), the Deputy Collector or the Town Planner shall verify the record to examine whether any permission for conversion of land has been issued.

2. The site will be inspected and if it is prima facie established that the work is illegal, a stop work order will immediately be issued.

3. The Police will be informed and asked to enforce the stop work order.

4. The information will be sent to the Range Forest Officer of the area for inspection and further action under Preservation of Trees Act.

5. If Town Planning finds that the violation contravenes Section 17A of Town and Country Planning Act, a report will be made by the Town Planner to the Police. (If the govt gives sanction to the police to prosecute the accused under Section 17A, the law will thereafter take its own course.)

However, cases take a long time to be decided and the maximum fine of Rs.1 lakh has not been imposed on anyone till date. What is lacking with the above steps is a firm disincentive for those who illegally cut hills, and measures to protect the hill so as to prevent further collapse, especially during monsoons. Hence, the following additional steps are suggested:

1. Any equipment found at the site that was used for the illegal hill cutting (for example, bulldozers, trucks) should be seized.

2. Immediately after Town Planning (TP) establishes that the hill cutting is illegal / violation of S. 17 A, TP should initiate measures to protect the remaining hill. TP will require to take advice from engineers / architects as to the best measures to be adopted for immediate stabilisation of the cut portion of the hill and for the long term restoration of the hill (to the extent possible) to its original profile. For this purpose, TP should either set up a panel of engineers / architects that it can consult, or it should route its request to the Institute of Architects / Institute of Engineers who will depute a professional to assist TP.

3. The work of stabilizing the cut portion of the hill should be undertaken by whosoever has cut the hill or by the property owner. The work should be executed on priority basis (without prejudice to any legal proceedings, if initiated u/s S. 17 A) as it is vital to protect the hill from further collapse.

4. TP should prepare a profile of the hill as it existed before it was illegally cut. This area should be demarcated on the ground at the site. No development should be permitted in this area until the case filed under Section 17A has been decided. The violator should not be permitted to enjoy the benefit of the illegal hill cutting even while the case carries on at its own pace. This will act as a disincentive to people to illegally cut hills in order to speedily develop their plots.

5. The task of restoration of the hill is aimed at bringing back the cut portion of the hill to near original with all the possible parameters of damage being contained. Annexed hereto is a detailed note on method of restoration that has been prepared by an architect firm at the request of amicus. Restoration of the hill should be undertaken at the earliest and the work of executing the plan and cost of the same should be borne by the owner of the property. TP should check the work after it is completed.

6. If the person is eventually found guilty under fine, s/he should not be permitted to use the profiled / restored, for any development in fu

7. No post facto application for hill cutting shou

Ms. Norma Alvares
Amicus Curiae
5th September 2008

Restoration of Hill Cutting

Note prepared by Architects K.D. Sadhale and Abhijit Sadhale

Restoration is aimed at bringing back the cut portion of the hill to near original, with all the parameters that have been damaged being restored to the extent possible.

1. Restoration of geo-morphological form

   It is possible to assess the appropriate original form of the hillock with the help of topo-sheets, contour lines, the profile of the cutting line and the shape of the hill. The cut portion should be developed into terraces, properly retained by retaining walls of the appropriate size as per engineering requirements. Height of the retaining wall should not be more than 1.5 m and can be made of rubble masonry. This masonry should not be in straight line on plan but should follow the profile of the original contour as per sketch attached. If earth filling is required to attain this, it should not be by cutting some other hill. It is preferred that the earth should be brought back from where it was dumped originally from the hill cutting. If this is not possible, then it can be brought from the illegal fillings in low lying areas or urban debris which one finds dumped here and there. If nothing is workable, then mining rejects can be brought.

2. Prevention of soil erosion

   While making terraces, the top of each terrace should slope inwards towards the hill so that rain water soaks into the ground and does not run off. The rain water drainage pattern should be examined and re-organized to suit the man-made profile without causing soil erosion and without damaging the retaining wall. Each terrace top should be finished with grass cover. The fibrous roots of grass hold the earth firmly, thus preventing soil erosion. Subsequently trees should be planted on the terraces.

3. Restoration of vegetative cover

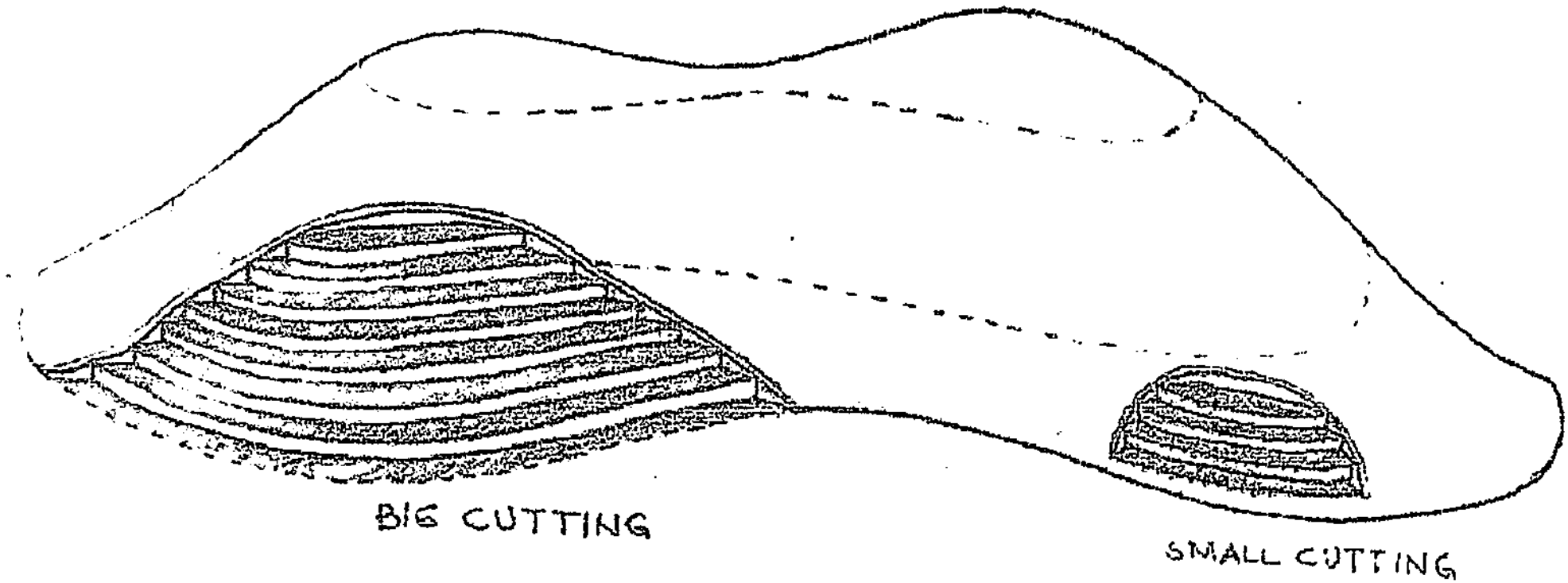
Restoration should not be aimed at just planting a few trees of some exotic fast growing variety but restoring the original flora of the place with its bio-diversity and canopy structure. After restoration is complete and plantation gets established, the restored part and original hill will get merged into each other. The services of a botanist may be required to determine the species of trees and their distribution.

4. Removal of damage caused to those places where the earth has been dumped

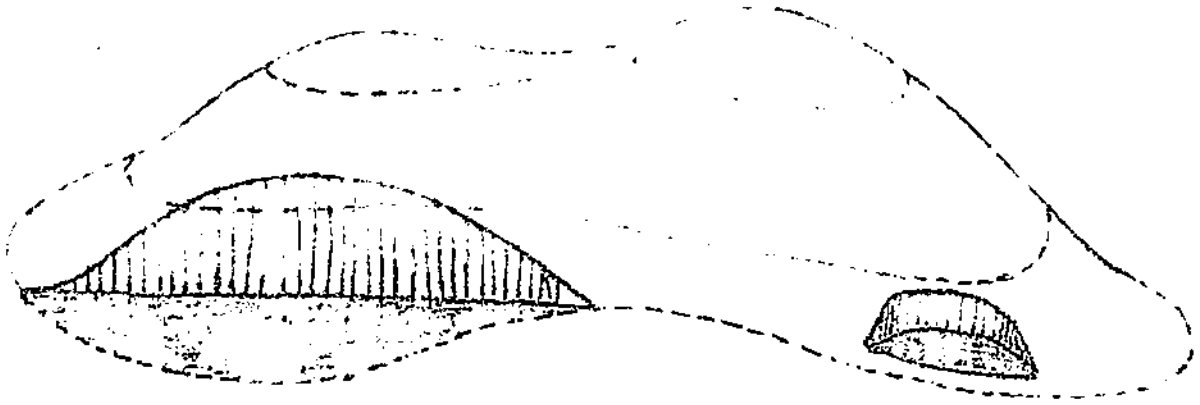
Many a time earth from the hill cutting is dumped in low lying lands or wetlands, thereby damaging the wetland eco-system and reducing the capacity of the landform to provide buffer space for flood water containment. If this damage can be also be undone by directing removal of the earth from the low lying area, the task of restoration will attain completeness in respect to the parameters of damage.

Ecological damage caused by geo-morphological changes in the landform without proper permission from Town and Country P Department or any other concerned department of Government of Goa

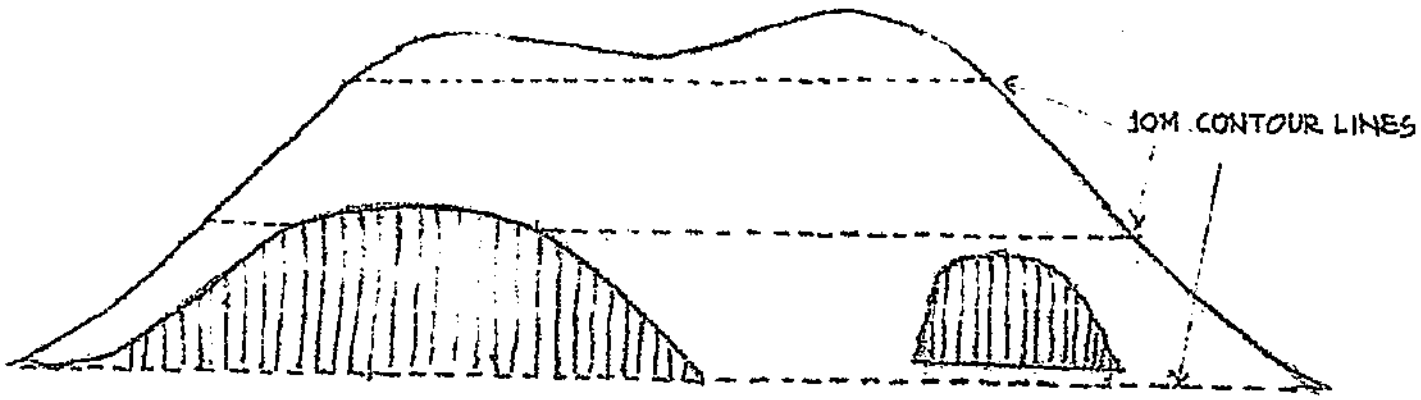
1)	Hill cutting (more than 500m2)	Ecological damage: Change in the land form, soil erosion, total de-vegetation and visual eyesore.
2)	Filling in the low lying land (more than 100m2)	Ecological damage: Change in the landform, destruction of the wetland ecosystem, destruction of the flood containment capacity of the land form.
3)	Dumping urban or industrial waste or earth from hill cutting (more than 500m2 and waste more than 250m3)	Ecological damage: Destruction of ground flora and fauna. Change in the landform, pollution of ground water.
4)	Altering the shape or size of perennial water bodies	Ecological damage: Interference with the aquatic ecosystem, loss of ground water recharge.



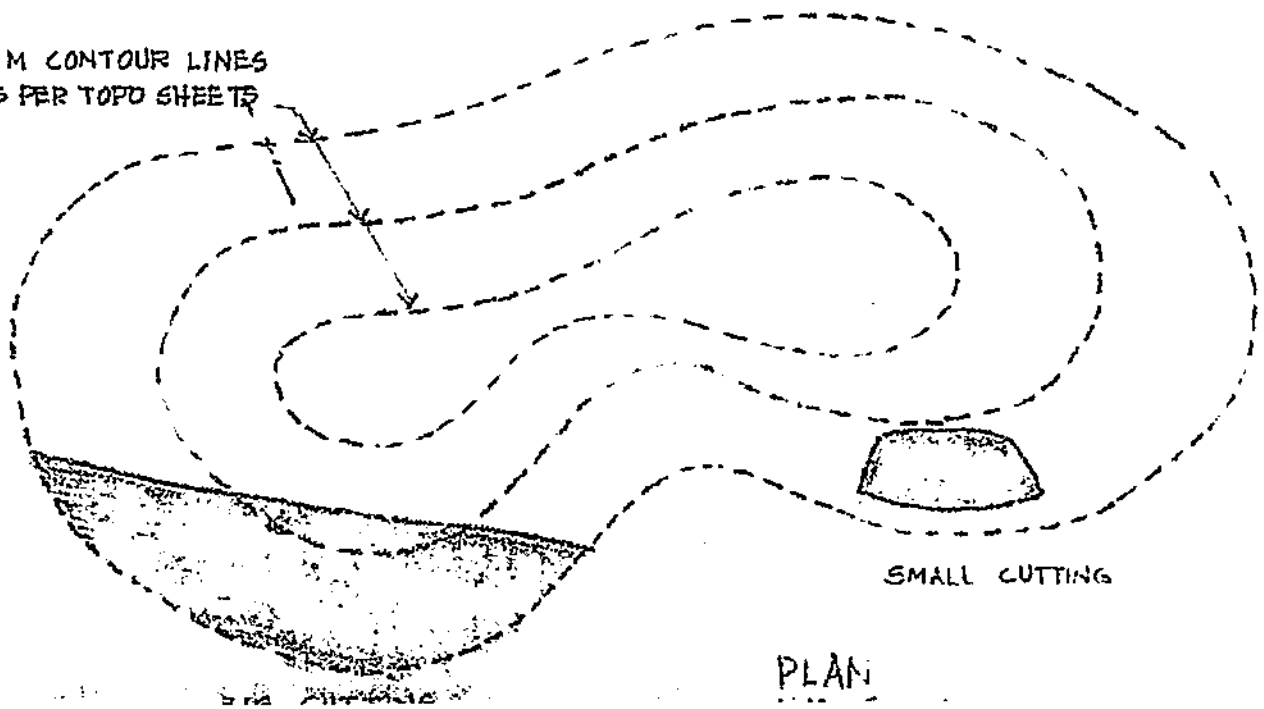
ECOLOGICAL RESTORATION OF THE HILL-CUTTNG
BY DEVELOPING TERRACES FOLLOWING
THE ORIGINAL CONTOURS OF THE HILL



PERSPECTIVE VIEW



ELEVATION



PLAN

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner

Versus

VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Ms. Norma Alvares, Amicus Curiae for the petitioner.
Mr.S.S. Kantak, Advocate General with Ms. Gauri Bhousale, Additional Government Advocate for respondent no. 2 and 3.
Mr. Ryan Menezes, Advocate for respondent no. 4 and 5.

Coram:- SMT. V.K.TAHILRAMANI & N. A. BRITTO, JJ.

Date:- 15th December, 2009

P.C.

Heard.

Shri Kantak, Learned Advocate General submits that a Committee to frame a policy will be constituted within this week. He further submits that the Committee will frame a policy, within a period of eight weeks, suggesting measures to prevent hill cutting and take immediate remedial measures in cases where there is illegal hill cutting.

As regards the action taken for the hill cutting involved in this petition, Learned Advocate General has placed on record a letter dated 11.12.09 and has submitted that a charge sheet has already been filed under Section 17-A of the Town and Country Planning Act on 5.2.09 against private respondents and the case is pending trial before the Learned J.M.F.C. at Mapusa.

As regards action taken against the officers, Shri James Mathew, Senior Town Planner has filed affidavit dated 9.12.09. Earlier affidavit was filed on 30.11.2009 by Shri Morad Ahmad, Chief Town Planner. . In the affidavit of James Mathew, Senior Town

Planner, it is now disclosed that action has been taken by issuing memo with warning to Mr. M.S. Rawool, Planning Assistant and Mrs. Vertika Dagur, copies of the said memorandums have been produced on record.

Since some action has been taken by the concerned Department against the erring officers, we need not proceed further. However, we are not satisfied in the manner the affidavit has been filed by the Chief Town Planner on 30.11.2009. If at all on 4.7.2009 this Court observed that the subject matter need not be pursued further it was because of the affidavit of Mr. James Mathew, Senior Town Planner who stated before the Court that a detailed inquiry would be made and necessary action against the erring officials would be initiated. However, since two memos have been issued to the said Planning Assistant, one on 23.9.08 and the other on 15.4.09 and to the Town Planner on 23.5.2008, the matter now need not be proceeded further except for the report of the Committee. S.O. 8 weeks i.e. 9.2.2010.

SMT. V.K.TAHILRAMANI, J.

N. A. BRITTO, J.

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No. PI/ANJ/968 /2009
Police Inspector:
Anjuna Police Station.
Dated: - 11/12/2009

To,
The Senior Town Planner (North).
Town & Country Planning Department,
Government of Goa.
Mapusa Goa.

Sub: - Hill Cutting under Sy.No. 189/2 of Village Siolim Bardez Goa.

Ref: - No.DB/19057/09/3591 dated 20.11.2009.

Sir,

With reference to above, I am to inmform you that an offence vide Anjuna Police Station Cr No. 17/08 u/s 17-A Town & Country Plannig Act was registered against 1) Jose F. Braganza s/o Martin Braganza age- 61 yrs r/o HNo. 130 Angod Mapusa and 2) Goraknath s/o Atamaram Fulari age 61 yrs r/o Fernandes wado Siolim, regarding hill cutting in Surey No. 189/02 of Village Siolim.

The said case was chargsheeted on 5.2.2009 against both the accused persons after obtaining necessary sanction required under law. The case is pending trail at JMFC Court Mapusa vide No. OA/160/S/09/C.

For favour of information. The copy of the FIR is attached herewith.

Yours faithfully.

(R.Y.Gaonkar)
Police Inspector .
Anjuna Police Station.

5507
11/12/09

14-12-09

PA/ RAWOOL

1276
19/2/08

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.c.)

1. Distt.:- North P.S.:- Anjuna Year:- 2008 FIR No:- 17/2008. Date:-18/02/2008

2. (i) Act:- Town & Country Plaining Act. Sections:- 17-A of Goa Town & Country Plaining Act.

(ii) Act:- - Sections:- -

(iii)Act - Sections -

(iv)Act - Sections -

3.(a) Occurrence of Offence:- Day-- Date:-18.02.2008 Time:-Prior to 7.2.08 TNK

(b) Information received at P.S. Date:- 18.02.2008 Time:-18.00hrs

(c) General Diary Reference : Entry No 49/08 Time:- 18.00hrs

4. Type of information:-Reg. Hill Cutting written/oral

5. Place of occurrence: (a)Direction & Distance from P.S. 6 Km N/E Beat No:-Siolim O.P.

(b) Address:-Survey No.189/2 Bamon wado Siolim.

(c) Incase outside limit of this Police Station, then the name of p.s.-

District;-

6. Complainant/Informant

(a) Name:- :-STATE- Vertika Dagur

(b) Father's/Husbands Name:- -

(c) Date/year of Birth:- (b) Nationality;-Indian

(e) Passport No;- - Date of Issue:- - Place of Issue;- -

(f) Occupation:- Town Planner

(g) Address:-Town & Country Planner Dept. Mapusa Goa.

7. Details of known/suspected/unknown accused with full particulars (Attach separate if necessary)

8. Reason for delay in reporting by the complainant/Informant:- Upon written complaint received from the complainant.

9. Particulars of properties stolen/involved(attached separate sheet if necessary0:- NIL

10. Total value of properties stolen involved:- NIL

11. Inquest Report/U.D. case No. if any;-NIL

12.F.I.R. Contents(attach separate sheet if required)

That the accused person not named in the complaint but to whom earlier NOC issued by the Town Planner for residential Villas during year 2004 & 2006 prior to the visit of the officials of town & Country Panning Dept. on 7.02.08 have resorted that hill cutting towards the northern side without the permission from the competent authority i.e Town & Country Plaining.

Hence registered offence u/s 17-A of Goa Town and country plaining Act.

13. Action taken since the above report reveals commission of offence(s) as mentioned at item No 2. Registered the case and took-up the investigation/directed Filomeno Costa PSI of Anjuna Police Station

Rank PSI to take –up the investigation/transferred to p.S - on point of jurisdiction.

F.I.R read over to the complainant/Informant, admitted to be correctly recorded and a copy given it to the complainant/Informant free of cost.

-sd-

Signature of the officer –in-charge,
Police Station
Name :-Nerlon Albuqurque
Rank:-PSI

-s.d-
14. Signature/Thumb impression
Of the Complainant/Informant .
15. Date & time of dispatch of the court 18.2.08

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner
Versus
VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Ms. Norma Alvares, Amicus Curiae.
Mr. S. S. Kantak, Advocate General with MS. G. Bhonsale, Addl. Government Advocate for Respondent nos. 2 and 3.

Coram:- S.B. DESHMUKH &
U. D. SALVI, JJ.

Date:- 3rd August, 2009

P.C.

We have heard the learned Amicus Curiae and learned Advocate General for the State of Goa.

2. In view of the earlier Orders passed by this Court, affidavit sworn in by one Morad Ahmad, Chief Town Planner, Town and Country Planning Department, State of Goa is filed. In this affidavit and more specifically Para 11, it has been suggested that to request the Government to ask the Law Commission to look into the finer aspects of the matter and make appropriate suggestions.

3. After hearing the learned Counsel for the parties, in our view, such exercise may be undertaken by the Chief Town Planner, Goa Town and Country Planning Department, State of Goa.

4. Learned Advocate General Mr. Kantak submitted that in view of the provisions of the Land Revenue Code 1968, Goa Town Planning Act 1974 and Goa Minor Mineral Concession Rules 1985, on behalf of the

State, some modality/mechanism may be suggested to redress the problem of illegal hill cutting and restoration of the hills.

5. In our view, submission of the learned Advocate General, in the facts and circumstances of the case, is fair to be accepted. Such suggestion and/or modality/constitution of the Committee is permitted to be prepared and filed in the proceedings within eight weeks. Copy to be served to the learned Counsel appearing for the Petitioner.

6. S.O. eight weeks i.e. 29.09.2009.

S.B. DESHMUKH, J.

U. D. SALVI, J.

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IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner
Versus
VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Ms Norma Alvares,Amicus Curiae.
Mr. S. S. Kantak, Advocate General with Mrs.R. Chodankar, Addl. Govt. Advocate for the respondent Nos. 2 And 3.

Coram:- S. C. DHARMADHIKARI &
R. C. CHAVAN, JJ.

Date:- 8th September, 2008

P.C.

Ms Norma Alvares,learned Amicus Curiae has handed over a note containing measures to prevent illegal hill cutting and to restore hills that are illegally cut. A copy of this note is handed over to the learned Advocate General in the Court, who states that the suggestions in the note will be duly examined and appropriate decision would be taken in compliance. Place this PIL W.P. after four weeks. State to place on affidavit the decision pursuant to the examination of the suggestions by the learned Amicus Curiae.

S. C. DHARMADHIKARI, J.

R. C. CHAVAN, J.

SMA

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP. NO. 11 OF 2007

Mr. Satish S. Banaulikar. ..... Petitioner.

Versus

Village Panchayat of Siolim
and others. ..... Respondents.

Petitioner in person.
Advocate Ms. Norma Alvares, Amicus Curiae.
Ms. Winie Coutinho, Govt. Advocate for respondents No. 2 and 3.
Mr. S. D. Lotlikar, Senior Advocate with Ms. Sapna Mordekar, Advocate for respondents no.4 and 5.

CORAM : SWATANTER KUMAR &
N.A. BRITTO, JJ.

DATE : 28th April, 2008

P.C. :

We are not at all satisfied with the action taken by the respondents against the private persons, as well as the Government Officials who were involved in the entire episode of removing the hill. Firstly, the stand of the Department along with the private respondents, was that hardly any damage has been done to the hill. Subsequently, a committee of experts was appointed, which opined that a part of the hill was removed for the purpose constructing structures in question. Photographs at Exhibit A-5 show that there was non-application of mind at the time of sanctioning the plans.

2. In these circumstances and particularly in view of the fact that despite Court orders no effective steps are being taken, we direct the Chief Town Planner to file his personal affidavit in this Court, stating why the

persons higher in hierarchy responsible for all these acts should not be prosecuted and what steps have been taken for restoration of the hill, particularly in view of the statement made by the private respondents that they would carry out all remedial measures as suggested by the Committee. Thirdly, what action has been taken for prosecution of the private persons who, apparently, and even as per the respondents have committed the offences for which they are liable to be tried.

3. We further direct the Secretary, Town and Country Planning Department to file a separate affidavit stating clearly as to what steps have been taken by his Department to protect the greenery and steps taken to ensure that hills are not cut for the purpose of commercial constructions. That be done within two weeks from today. In the event affidavits are not filed, and the orders of the Court are not complied with, the Chief Town Planner and the Secretary shall remain present in the Court and in the event, Court orders are complied with, they need not remain present in the Court.

4. At the request of the Counsel appearing for the respondents, S.O. to 2nd June, 2008.

CHIEF JUSTICE

JUDGE

ssm

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner
Versus
VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Petitioner in person.
Advocate Ms. Norma Alvares, Amicus Curiae.
Mr. Shaikh Vahidulla, Addl. Govt. Advocate for the respondents No.2.
Mr. S. D. Lotlikar, Senior Advocate with Ms. Sapna Mordekar, Advocate for the respondents No.3 and 4.

Coram:- R.M.S. KHANDEPARKAR &
N. A. BRITTO, JJ.

Date:- 4th February, 2008

P.C.

A report by the Committee appointed under the Order dated 28.11.07 is placed on record. The learned Senior Counsel for respondents No.4 and 5 states that the said respondents have perused the report and the annexures thereto and are willing to take necessary remedial measures, as suggested by the Committee, within a period of 2 months from today.

2. The learned Addl. Govt. Advocate states that he will take necessary instructions as regards failure on the part of the Government Authorities to take appropriates steps to stop the acts complained of in relation to the hill cutting in question, as also what action the Authorities will take against the concerned officer/s, more particularly against the officer who had reported that there was no hill cutting at the site and for that purpose, he prays for two days' time.

3. We accept the statement made on behalf of the respondents No.3

and 4 and grant two months' time to take necessary remedial measures as suggested by the Committee. On expiry of the period of two months, the respondents No.4 and 5 should file a compliance report. The compliance report, in that regard, should also be filed by the respondents No.1 and 2, under their affidavits. Such reports and affidavits should be filed on or before 15th April, 2008 and shall be placed before this Court on 21st April, 2008.

4. We appreciate the services rendered by the Members of the Committee by sparing their valuable time and suggesting certain measures to be taken in the matter. As a gestures of appreciation, we direct the respondents No.4 and 5 to pay a sum of Rs.5,000/- each to the Architect Dean D'Cruz and the Engineer Viraj D. Paraz, within 15 days from today.

5. As regards the earlier order directing maintenance of status quo, the same stands vacated. However, the respondents shall not be permitted to carry out any hill cutting beyond the extent suggested and recommended by the Committee.

6. S.O. to Wednesday i.e. 6th February, 2008 for informing the Court about the instructions as regards the failure on the part of the Government Authorities to take appropriates steps to stop the hill cutting and about the action that Government proposes to take against the concerned Officers.

R.M.S. KHANDEPARKAR, J.

N. A. BRITTO, J.

ssm.

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION NO. 11 OF 2007

Mr. Satish S. Benaulikar .... Petitioner

V/s

Village Panchayat Siolim & 4 Ors. .... Respondents

Mrs. N. Alvares, Amicus Curiae.
Ms. W. Coutinho, Govt. Advocate for Respondent No.2.
Mr. R. Menezes, Advocate for Respondents No.4 and 5.

CORAM : D.B. BHOSALE &
N.A. BRITTO, J.J.

DATE : 9th JANUARY, 2008

P.C.:

Heard learned Counsel for the parties.

2. In pursuance of our order dated 28/11/2007, the Collector, North Goa has submitted report dated 27/12/2007. The report shows that there is illegal excavation/cutting of the hill and it was done without prior permission from the Town Planner as required under Section 17(A) of the Town and Country Planning Act. The report further shows that in order to stabilize the hill and prevent landslides in future, the cement concrete wall with weep holes be constructed to a height of about 9 metres, after some amount of clearing and benching activity is undertaken at the places where the landslides have occurred. He has also suggested that the benching activity and the concrete wall construction should be supervised by a competent Civil Engineer. He

has further suggested that for exact dimensions of hill cutting, a detailed survey may have to be carried out. There is yet another report of Dean D'Cruz dated 17/12/2007, placed on record by Amicus Curiae, which is also consistent with the report submitted by the Collector.

3. Having considered both these reports and after perusing the photographs and a letter dated 17/12/2007 of Superintending Engineer-III annexed to the report of the Collector, we deem it appropriate that an appointment of experts' committee would be necessary which would visit the site and make its report in the light of the observations made in the two reports mentioned earlier. Hence, we appoint the following experts' Committee:

1. Mr. Dean D'Cruz
Architect,
Addr.:Mozaic
House No. 751/1,
Alto Porvorim,
Salvador do Mondo,
Bardez 403521.

2. Mr. Viraj D. Paraz
M.E. (Civil)
Addr.: No.9, 4th Floor,
Communidade Ghor,
Mapusa 403 507.

3. Collector, North Goa
or his nominee.

4. The Committee is requested to visit the site and submit its report on the following points:

(a) To examine the extent of hill cutting and also to find out report on whether any of the bungalows constructed are within the portion of the hill that has been razed.

(b) To recommend the protective measures that are required to be undertaken, so as to stabilize the hill and prevent further landslides or erosion of the hill.

(c) To express its opinion as to whether it is possible to restore the hill which has been illegally cut.

5. The Committee is expected to carry out the site inspection with an advance notice to the Petitioner and all the concerned, including Respondents No. 4 and 5, and submit its report within a period of three weeks from today. Mrs. N. Alvares, learned Amicus Curiae on behalf of the Committee shall inform the date of inspection to the Petitioner and the learned Counsel appearing for the Respondents. Respondents No. 4 and 5 shall bear the expenses for carrying out the inspection by the Committee. The expenses will be quantified after submission of the report. Mrs. N. Alvares has agreed to communicate this order to the Members of the Committee within a period of one week from today.

6. Pendency of this Writ Petition shall not preclude the concerned

authorities from taking action against Respondents No. 4 and 5 for illegal hill cutting, if they so desire and advised.

7. S.O. after three weeks. Authenticated copy be expedited.

D.B. BHOSALE, J.

N.A. BRITTO, J.

NH/-

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner

Versus

VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

Petitioner in person.
Advocate Ms. Norma Alvares, Amicus Curiae.
Ms. Winnie Coutinho, Government Advocate for respondent No. 2.
Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryne Menezes, Advocate for respondents No.4 and 5.

Coram:- D. B. BHOSALE &
N. A. BRITTO, JJ.

Date:- 28th November, 2007

P.C.

Ms. Norma Alvares, Advocate is appointed as an amicus curiae in this matter. Registry to make available entire set of petition to the learned amicus curiae, within a week's time.

2. In this PIL writ petition, the petitioner has made a grievance that Shri Goraknath Atmaram Fulari and Shaku Braganza are illegally excavating/cutting hill from the property bearing Survey No. 189/2 situated at Bamon Wada, Siolim, Goa. It appears that after making such grievance before all the concerned authorities, he has approached this Court for redressal of the grievance. He has stated that if the illegal excavation/cutting hill is not stopped, it would further result in soil erosion/land sliding which would effect/damage his and others properties and is also likely to endanger human life.

3. The respondents have filed their replies and denied the allegations

of illegal excavation/cutting of hill.

4. The photographs placed on record do, prima facie, show that there is excavation/cutting of hill. Mr. Lotlikar, learned Senior Counsel for the contesting respondents, however, submits that the photographs are not taken from proper angles and, therefore, they are misleading. The contesting respondents have annexed one photograph to their affidavit filed today which, according to Mr. Lotlikar shows a retention wall said to have been erected to avoid further erosion and land sliding. From the photographs and the averments made in the affidavits, it is not clear as to whether there is hill cutting as alleged and the existing retention wall is sufficient to avoid further land sliding.

5. In this view of the matter, we find it appropriate to direct the Collector, North Goa, Panaji to peruse the application of the petitioner dated 21.8.2007 and the photographs on record and then personally visit the site to verify the situation at the site. During his inspection of the site, he will find out whether there is an illegal excavation/cutting of hill and the retention wall constructed by the developers is sufficient enough to avoid further land sliding. The Collector may inform the parties concerned to remain present at the time of inspection, if they so desire. He may submit his report before the next date of hearing along with the photographs of the site taken from different angles. S.O. for three weeks.

D. B. BHOSALE, J.

N. A. BRITTO, J.

ssm.

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 11 OF 2007

MR. SATISH S. BANAULIKAR ... Petitioner
Versus
VILLAGE PANCHYAT SIOLIM, AND 4 ORS., ... Respondents

The Petitioner in persor..
Ms. Winnie Coutinho, Addl.Govt.Advocate for Respondent No.2.

Coram:- R.M.S. KHANDEPARKAR &
R. S. MOHITE, JJ.

Date:- 29th October, 2007

P.C.

Issue notice to respondent Nos.4 and 5, returnable on 28th November, 2007. The parties are directed to maintain status quo in the property in question. The respondent No.3 to ensure with the help of any of his officers in his office to record status regarding construction activities in the property and to submit report in that regard to this Court on the next date of hearing.

R.M.S. KHANDEPARKAR, J.

R. S. MOHITE, J.

SNG

List will be taken on 9/12/07 at 2.30 pm.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI BENCH

WRIT PETITION NO.11 OF 2007
(PUBLIC INTEREST LITIGATION)

Mr. Satish S. Benaulikar ..... Petitioner

V/s

Village Panchayat Siolim, and 4 ors. ..... Respondents

No.J/(PIL)WP-11-07/6452/2007

Date: 27th December, 2007.

To,
The Registrar of High Court
of Bombay,
Panaji Bench.

28/12/2007

Sir,

With reference to your above cited Notice of the Hon'ble High Court, please find enclosed three copies of report as directed by the Hon'ble High Court.

Yours faithfully,

(R. MIHIR VARDHAN)
Collector of North Goa

Encl: As above.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI BENCH

WRIT PETITION NO.11 OF 2007
(PUBLIC INTEREST LITIGATION)

Mr. Satish S. Benaulikar	.....	Petitioner
V/s		
Village Panchayat Siolim, and 4 ors.	.....	Respondents

R E P O R T

1. On 28/11/2007, Hon'ble High Court passed an Order directing Collector, North Goa to submit a report in the above said matter. The certified copy of the said Order enclosing all papers was received by me on 06/12/2007. In the said Order, the Hon'ble High Court has directed me to personally visit the property bearing Survey No.189/2 situated at Bamon Vaddo, Siolim, Bardez Taluka and give my findings on two issues viz. (1) Whether there is illegal excavation / cutting of the hill and (2) Whether the retention wall constructed by the developers is sufficient enough to avoid further landslide.

2. Pursuant to the above said Order, I have visited the said property on 13/12/2007 and conducted inspection in the presence of both parties. At the time of inspection, portions of the hill had been affixed with nets. These nets were uncovered to have clear view. I have also taken photographs of the said property. A collection of the photographs is annexed to this report as **"Exhibit - A"**. Some technical assistance has also been taken in preparing this report. Annexed is **"Exhibit – B"** which is a report submitted by Shri. D. G. S. Borkar, Superintending Engineer, Public Works Department, Government of Goa.

3. Having perused the application of the petitioner and the other papers submitted with the Court Order, the following questions need to be answered as directed by the Hon'ble High Court: -

(i) Whether there is illegal excavation / cutting of the hill? This question is to be answered in two parts. One is whether there is excavation / cutting of the hill. Second, if there is excavation / hill cutting, whether it is legal or illegal.

(ii) Whether the retention wall constructed by the developers is sufficient enough to avoid further landslide?

4. Regarding the first part of the first question as to whether there is hill cutting / excavation, **it is found that the hill has been cut from its base.** This can be judged from the slope of the hill and the angle of gradient. The cutting from one end to the

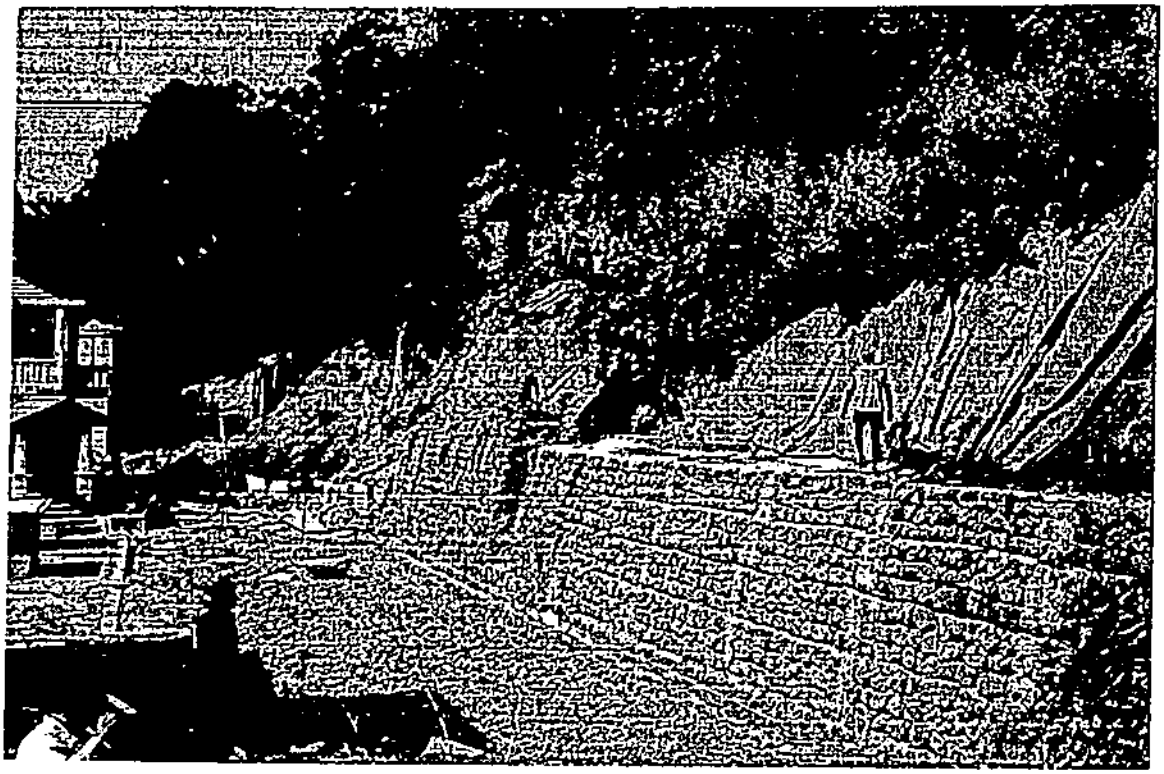
other extends to a length of about 70 to 80 meters east - west. For exact dimensions of hill cutting, a detailed survey may have to be carried out.

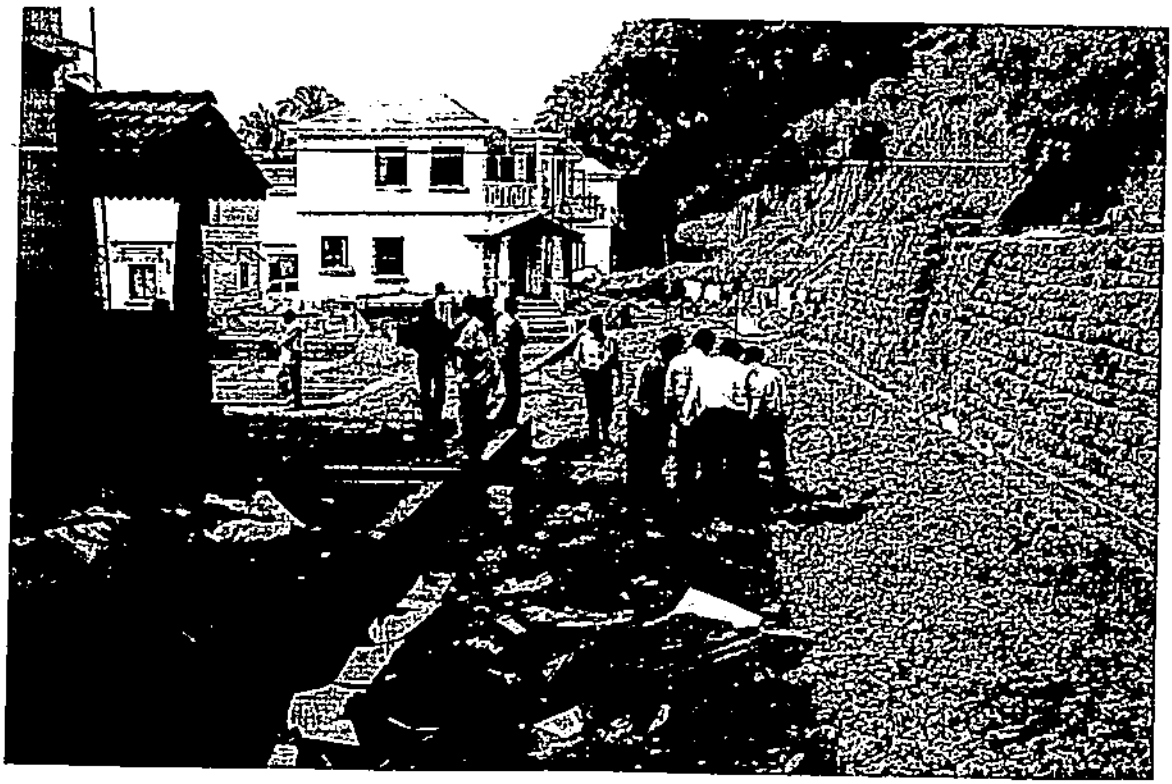
5. Regarding the second part of the first question as to whether the hill cutting / excavation is legal or illegal, it is seen that there is permission under Rule 53 of the Goa, Daman & Diu Minor Mineral Concession Rules, 1985 from the Director of Mines vide letter No.1/101/2003-Mines/1850 dated 09/10/2006 to excavate murrum and transfer it to a different site for dumping. For hill cutting, permission is required under Section 17 A of the Town and Country Planning Act. The Town and Country Planning Department has issued NOC for the construction of villas and swimming pool first time in October' 2004 and second time for revised plans in November' 2006. In both cases, it is specifically mentioned that there shall be no hill cutting without obtaining prior permission from the Chief Town Planner. **No such permission from the Chief Town Planner appears to have been taken. It appears that the hill has been cut illegally.**

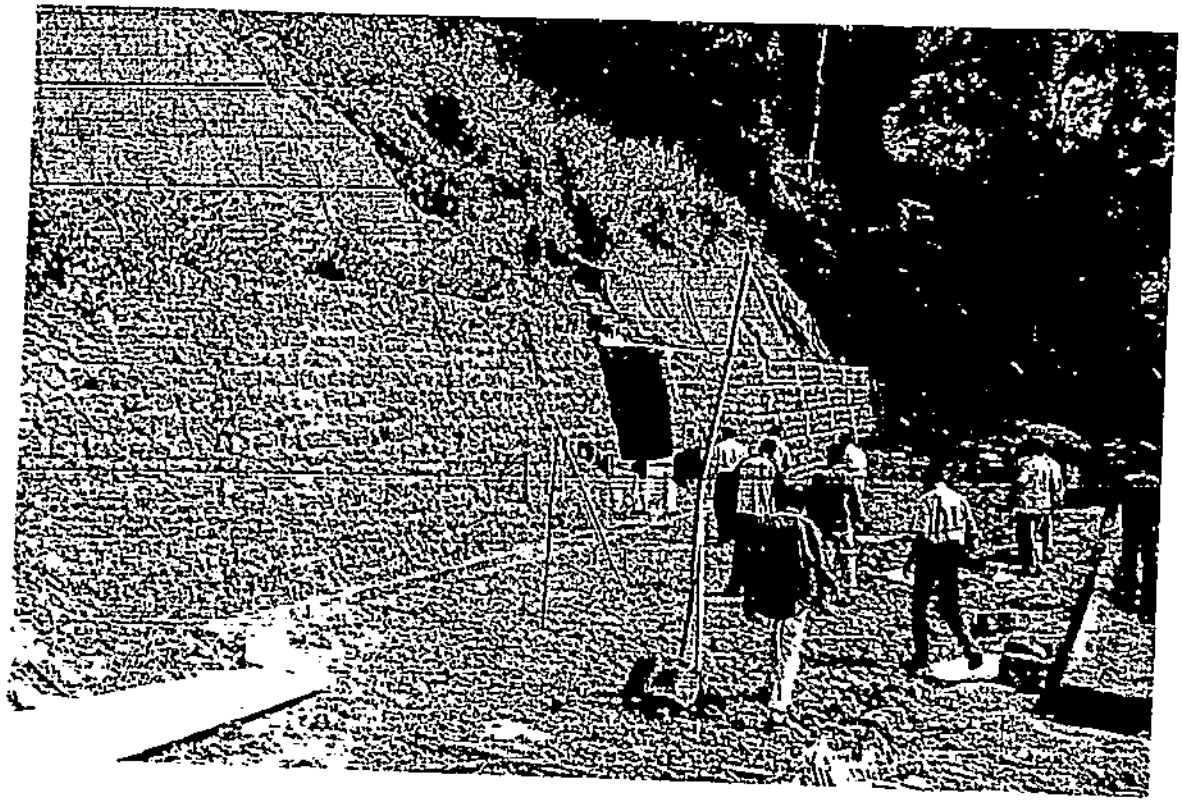
6. Coming to the second question of strength of the retaining wall, the wall constructed against the cut portion of the hill is not really a "retention wall", but a "toe wall". The height of the toe wall is about 3 meters. Some portion of the toe wall has been constructed with weep holes, whereas other portions are having no weep holes. Some portions of the wall not having weep holes have collapsed during the last monsoons. **It is found that the present walls with or without weep holes are not strong or sufficient enough because the soil at the base of the hill is very weak and incohesive and prone to erosion during heavy monsoons.** Only a cement concrete wall with the weep holes would protect the hill. **In order to stabilize the hill and prevent landslides in future, it is proposed that cement concrete wall with weep holes be constructed to a height of about 9 meters after some amount of clearing and benching activity is undertaken at the places where the landslides have occurred.** The benching activity and the concrete wall construction should be supervised by a competent Civil Engineer.

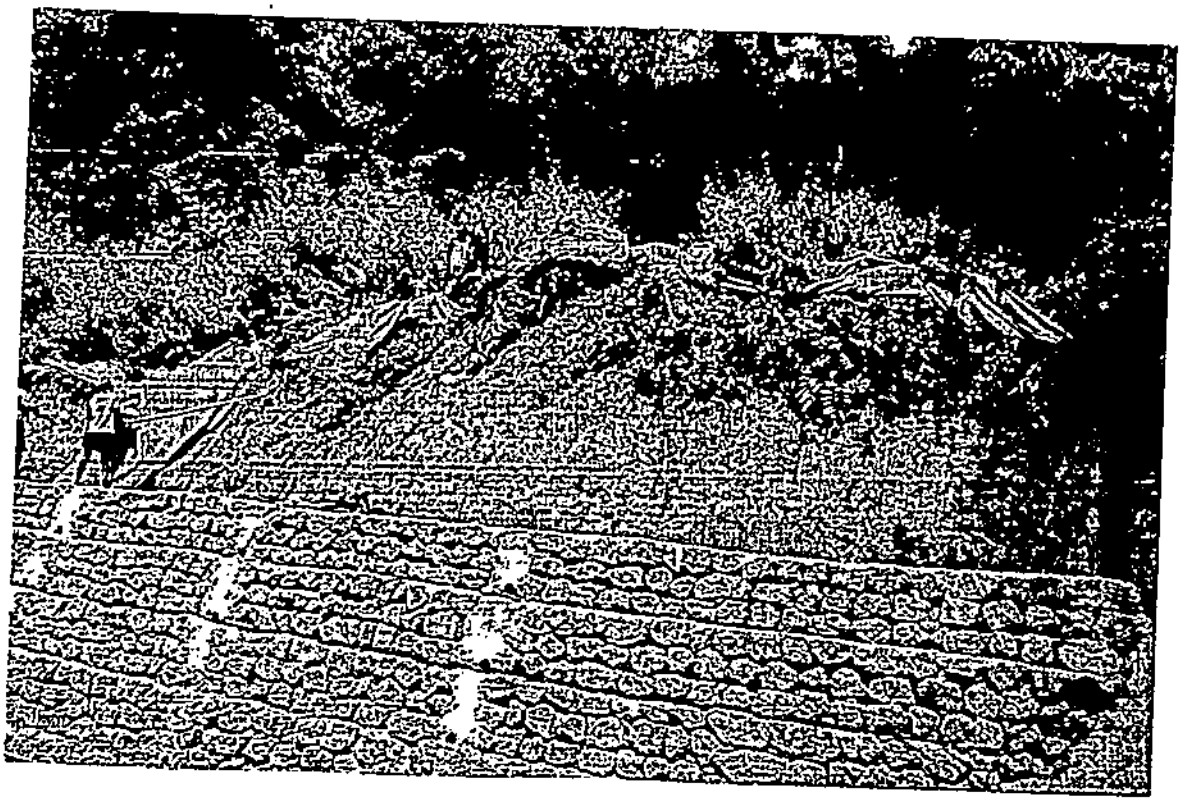
Place: Panaji – Goa
Dated: 27/12/2007

(R. MIHIR VARDHAN)
Collector of North Goa









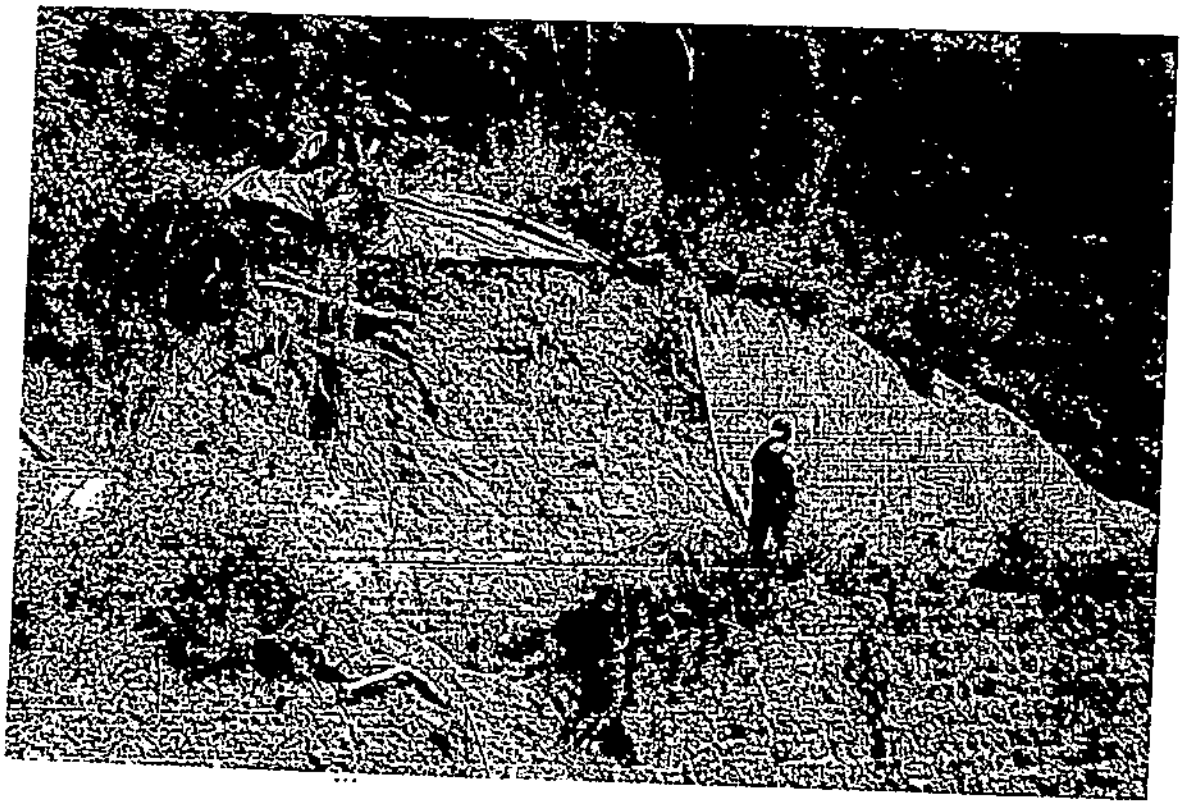
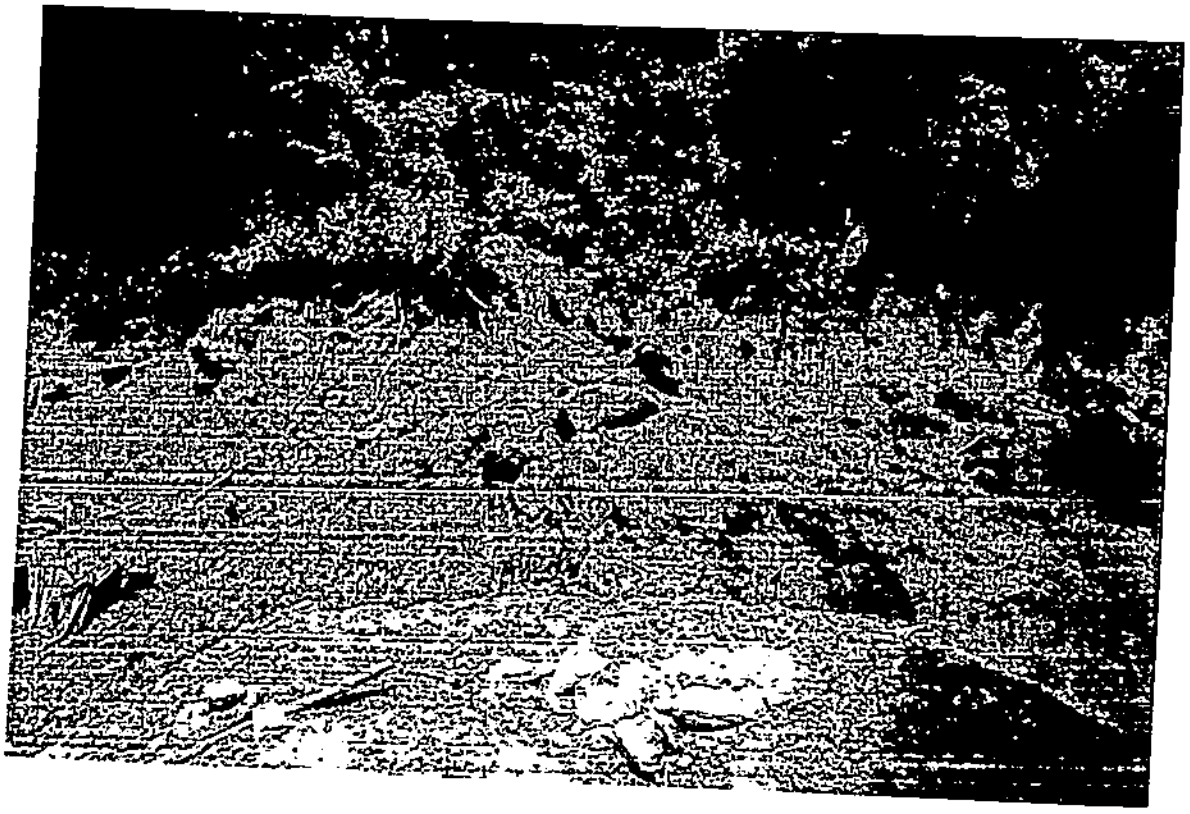
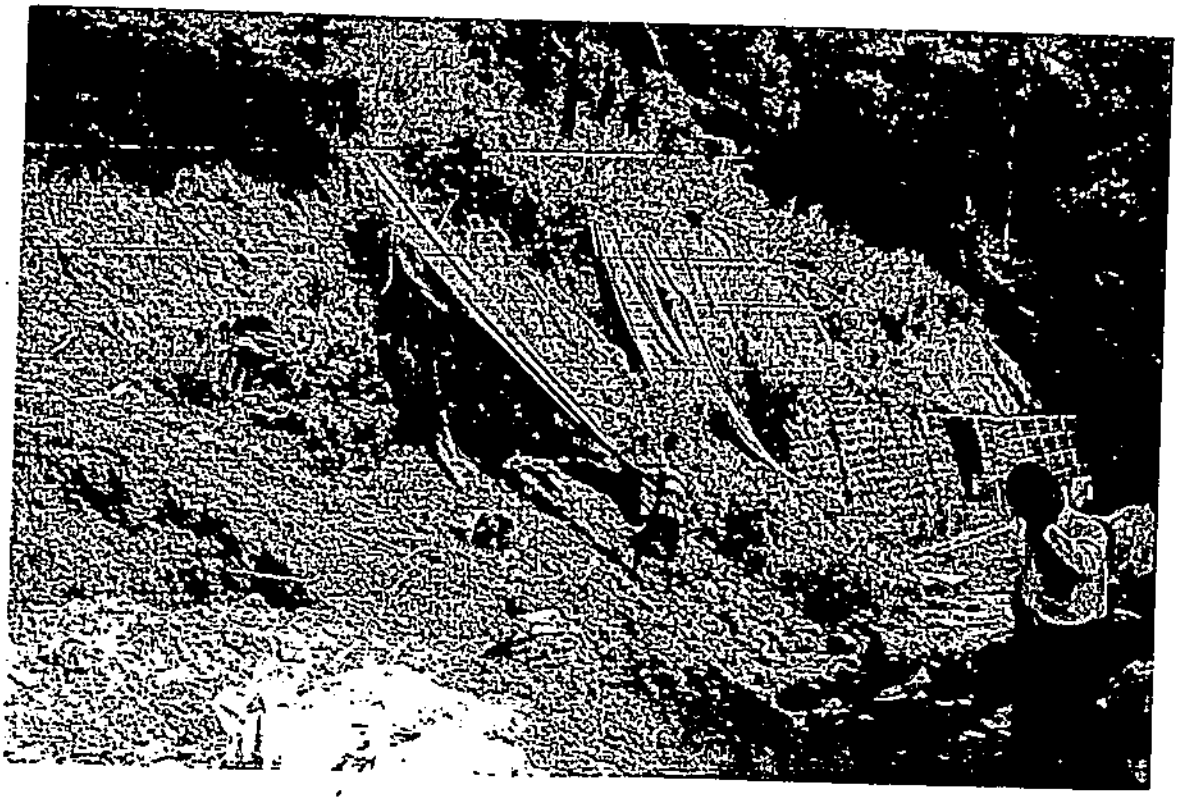
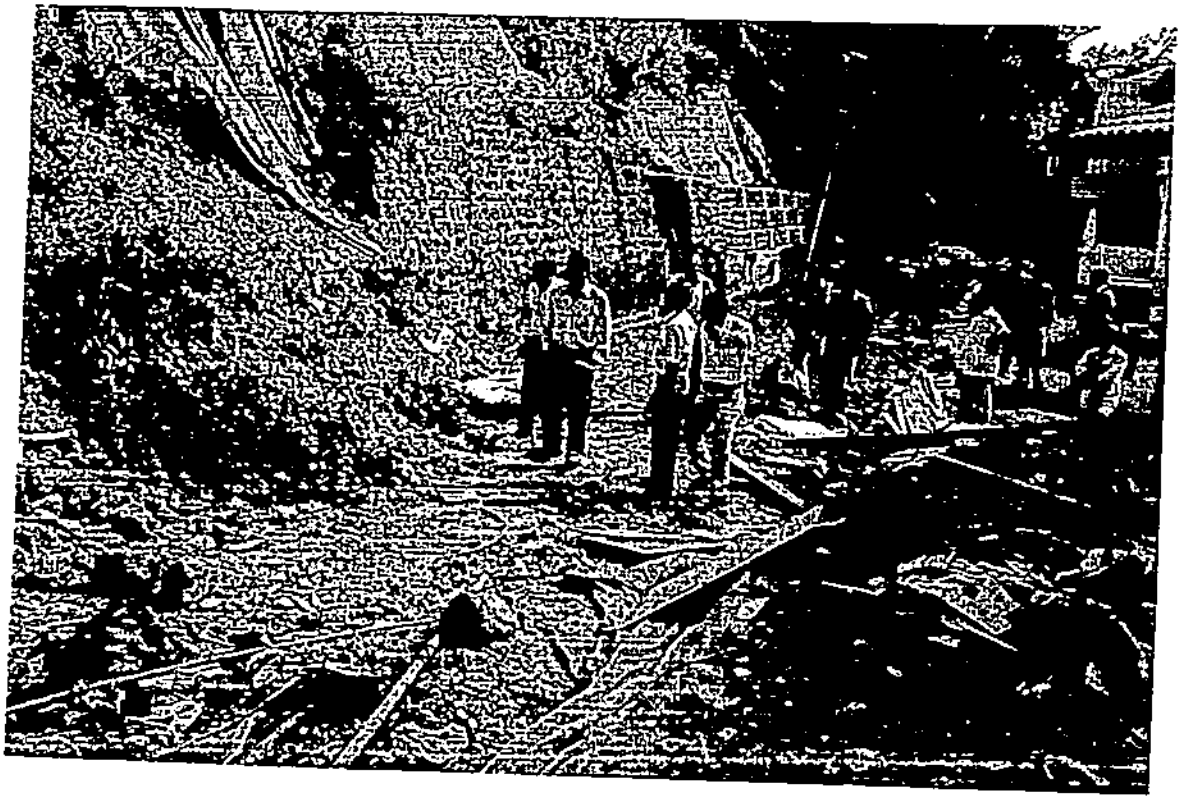
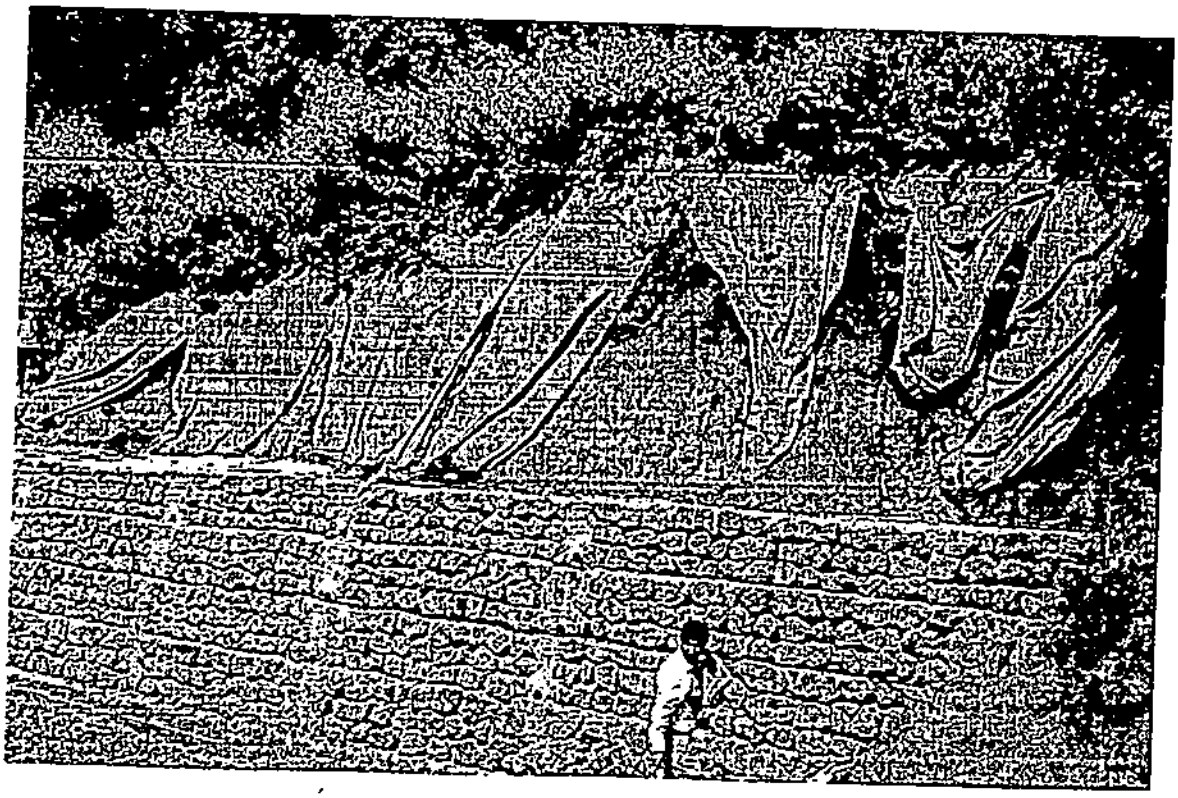


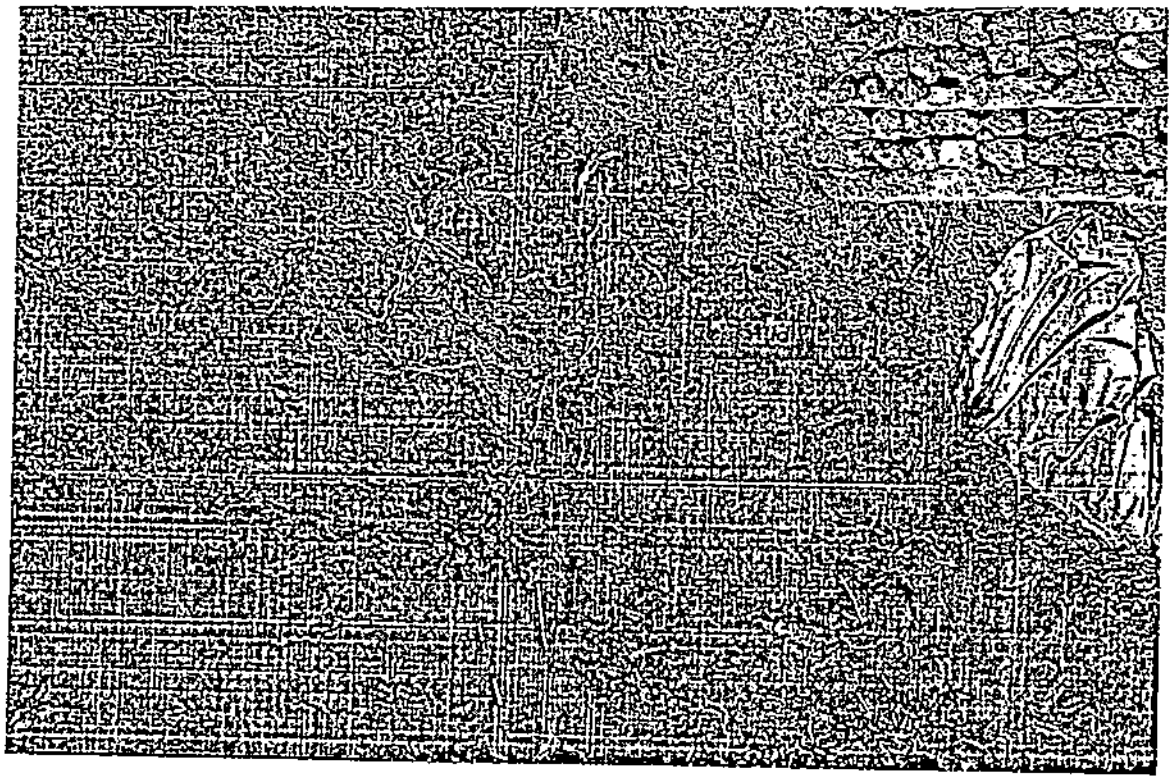
EXHIBIT-A 4











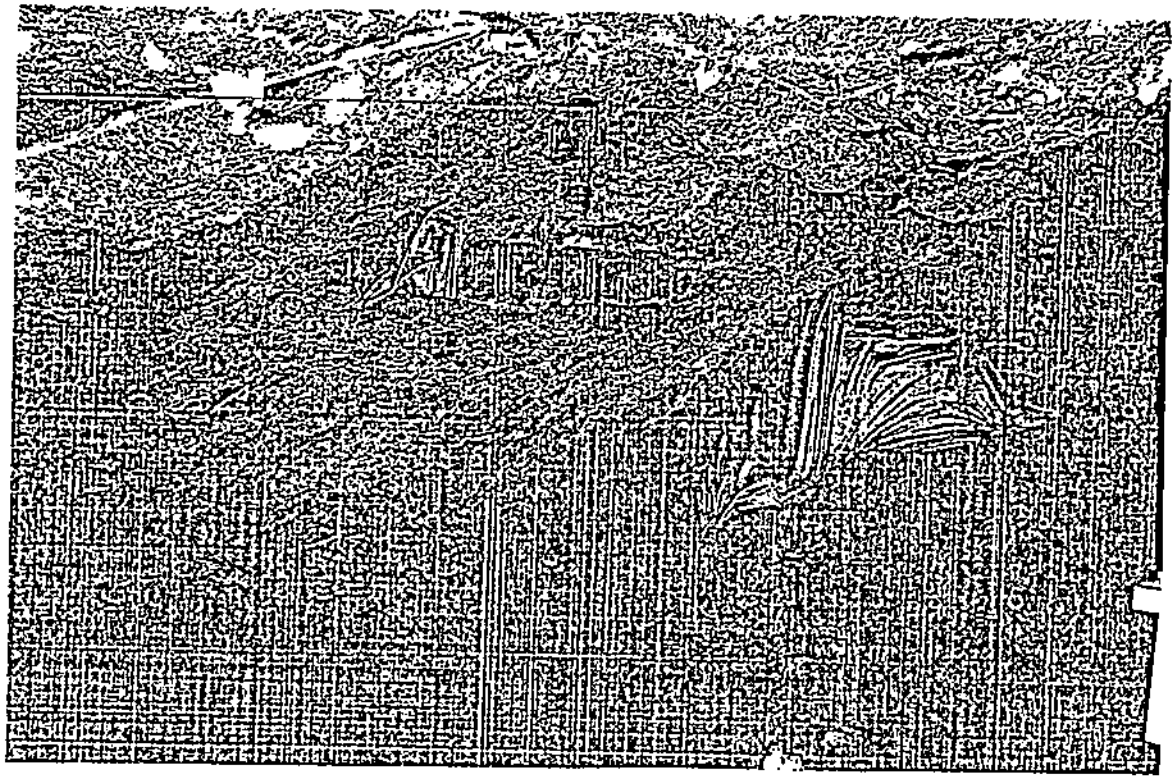


EXHIBIT-B

No.PWD/SEIII(R)/Tech/F.Lndslide/2007-08/ 1128
Office of the Superintending Engineer,
Circle office III (R),
Public Works Department,
Altinho, Panaji-Goa.

Dated: 17/12/2007

To,
The Collector,
North Goa District,
Panaji-Goa.

Sub: Inspection of hill collapse at Siolim – reg. .. ..

Sir,

As per the telephonic discussions/directives held with you, the undersigned alongwith Dy.Collector, Mapusa – Shri Khorjuvemkar and Geologist of the Mining Department inspected the side of collapse and it is observes as below:

1. The hill was cut to accommodate Cottages. A toe wall in laterite masonry along with a small concrete drain was found to be constructed at the foot of this hill. A portion of this toe wall has collapsed along with collapse of the slope of the hill.
2. It is observed that, the soil of this hill particularly at the base is of peaT type whitish in colour. It is informed that, such soil is a weathered version the laterite moorum and is very weak neither having cohesion nor shear strength and invariably flows during rain down pour.
3. The solution to check further slide and provide stability would be to reduce the overload by removing some of the top soil and constructing a concrete/RCC retaining wall under the guidance of a qualified foundation/Civil Engineer.

Yours faithfully,

(D.J. S. BORKAR)
SUPERINTENDING ENGINEER-III

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI GOA

Public Interest Litigation W.P. No. 11 of 2007

MR. SATISH S. BANAULIKAR. ..... PETITIONER

(ADVOCATE IN PERSON)

VERSUS

1. VILLAGE PANCHAYAT SIOLIM, BARDEZ, GOA
2. THE CHIEF TOWN PLANNER PANAJI, GOA
3. DIRECTOR OF PANCHAYAT, PANAJI, GOA
4. MR.GORAKH ATMARAM FULARI
   R/O BAMAN WADO, SIOLIM, BARDEZ, GOA
5. MR. SHAKU BRAGANZA
   R/O BAMAN WADO, SIOLIM, BARDEZ, GOA ..... RESPONDENTS

(ADVOCATE

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RESPECTFULLY SUBMITTED BEFORE :
THE HONOURABLE Mr. JUSTICE R. S. MOHITE, Senior Judge

My Lord,

One Satish S. Banaulikar, resident of Oxel, Siolim has sent the accompanying grievance addressed to the Hon'ble the Chief Justice.

He has complained against Shri Goraknath Atmaram Fulari and Shaku Braganza for illegal excavation/cutting of hill from the property surveyed under survey no.189/2 situated at Baman wada, Siolim.

According to the letter-writer he has approached this Hon'ble Court after exhausting all the available remedies i.e. after redressing his grievance before all concerned authorities, the Town and Country Planning Department, Mapusa, Mamlatdar of Bardez, Mapusa, Collector of North Goa, Panaji, the Dy. Collector, Mapusa and village Panchayat of Oxel, Siolim.

The main grievance of the letter-writer is as follows.

That he is the tenant in lawful possession and enjoyment of the property bearing survey no.190/0 situated at Baman wado, Siolim and his name figures as tenant in Form I and XIV.

That there exists a cashew plantation in property bearing survey no.190/0,which is a hilly region which is in enjoyment and possession of the applicant's family members. The property bearing survey no.189/2 in respect of which the letter-writer has complained is a low lying area and both share common boundary. The said Atmaram Fulari has also constructed bungalows in the said property bearing survey no.189/2 by cutting hills and the bungalows are on sale. The letter-writer has enclosed photographs in support of this allegation.

The letter-writer had lodged his complaint with the above stated authorities first on 11.1.2007 against Gorakhnath A. Fulari and Shaku Braganza both partners of B.F. Builders for starting construction in the property bearing survey no.189/2 and thereby in the process have started illegal excavation/cutting of portion of hill/soil. The work of excavation/cutting of hill is going on full swing without any permission.

Further, it is stated that is the illegal excavation of work is allowed then the same shall result into soil erosion/land sliding and in turn will affect/damage the property of the letter-writer and also adversely affect the cashew plantation.

The letter-writer has stated that the concerned authorities i.e the Collector and Village Panchayat have failed to take cognizance of his complaints dated 11.1.2007 and 1.8.2007. It is further stated that if the work of excavation is not stopped it will set a bad precedent in years to come without any sort of fear before carrying out such illegal activities which will adversely affect the nature and environment. **He has therefore, prayed to Your Lordship initiate action and penalize the wrong doers.**

On the above backdrop,

A) the letter may be registered as P.I.L. Writ petition; OR

B) any other suitable direction may be given.

(B. K. Thaly)
I/c Registrar

Date:29.8.2007.
Ap/-

The letter-writer had lodged his complaint with the above stated authorities first on 11.1.2007 against Gorakhnath A. Fulari and Shaku Braganza both partners of B.F. Builders for starting construction in the property bearing survey no.189/2 and thereby in the process have started illegal excavation/cutting of portion of hill/soil. The work of excavation/cutting of hill is going on full swing without any permission.

Further, it is stated that is the illegal excavation of work is allowed then the same shall result into soil erosion/land sliding and in turn will affect/damage the property of the letter-writer and also adversely affect the cashew plantation.

The letter-writer has stated that the concerned authorities i.e the Collector and Village Panchayat have failed to take cognizance of his complaints dated 11.1.2007 and 1.8.2007. It is further stated that if the work of excavation is not stopped it will set a bad precedent in years to come without any sort of fear before carrying out such illegal activities which will adversely affect the nature and environment. **He has therefore, prayed to Your Lordship initiate action and penalize the wrong doers.**

On the above backdrop,

A) the letter may be registered as P.I.L. Writ petition; OR

B) any other suitable direction may be given.

(B. K. Thaly)
I/c Registrar

Date:29.8.2007.
Ap/-

(3)

5469
23/8/2007

From:-Shri. Satish S Banaulikar
R/o H. No. 387/6B, Oxel,
Siolim, Bardez-Goa

Date:- 21/8/2007

To,
The Chief Justice,
High Court of Bombay at Goa,
Panaji Goa

Sub:- Complaint against illegal excavation /cutting of hill from the property surveyed under Survey no.189/2 situated at Baman Wada, Siolim, Bardez, Goa by Shri. Goraknath Atmaram Fulari & Shaku Braganza, both Partners in B. F. Builders, r/o Baman Wado, Siolim, Bardez-Goa resulting into lands sliding

Your Honour,

That the Applicant most respectfully submits as under :-

1. The Applicant has approached this Hon'ble court after exhausting all the available remedies before all concerned authorities such as Town & Country Planning Dept, Mapusa, Goa, Mamlatdar of Bardez, Mapusa, Goa, Collector, North Goa Panaji, the Dy. Collector, Mapusa, Goa and Village Panchayat of Oxel, Siolim, Bardez, Goa

2. The Applicant after failing to obtain the redress to his said Problem from the aforestated authorities at last resorted and have approach this Hon'ble court with the expectation that he will get redress to his problem

8. It is the case of the Applicant that he is the tenant in lawful possession and enjoyment of the property bearing Survey no.190/0 situated at Baman wado, Siolim, Bardez, Goa and the Applicant's name with respect to said property is recorded as tenant in Form I & XIV

9. In the property bearing Survey no.190/0 there exist a cashew plantation which are plucked and in enjoyment and possession of the Applicant's family members

P.A
23.8.07

10. The geographical location of the property bearing Survey no.190/0 is a hilly region and the property bearing Survey no.189/2 with respect to which the Applicant had lodged his complaint before the various authorities is an low lying area and both share common boundary

11. That the Applicant had lodged its complaint with the above stated authorities for the first time on 11/1/07 when the Applicant for the first time noticed that above stated persons namely Shri. Gorakhnath Atmaram Fulari and Shaku Braganza, both partners of B.F. Builders have started the work of construction in the property bearing Survey no.189/2 and thereby they have in the process of the said construction have started illegal excavation / cutting of portion of hill/soil which is geographically bounded below the property bearing Survey no.190/0 of which the Applicant is the lawful tenant and further intimated the above said authorities that the said illegal work of excavation/cutting of hill is processing at a lightening speed by using modern equipments and further complaint that said illegal work of excavation/cutting of hill is without any permission from any authorities.

That said Gorakhnath Atmaram Fulari and Braganza have also constructed bungalows in the said property bearing Survey no.189/2 by cutting hills and they are selling the said bunglows to the foreigners. The Applicant shall rely upon the photographs showing the bunglows and location showing cutting of the hill .

12. The Applicant has also brought to the notice of the said authorities that if said illegal excavation work is allowed then the same shall result into soil erosion/land sliding and in turn will effect / damage the property of which he is the lawful tenant bearing Survey no.190/0 and further severally affect the cashew plantation cultivated by him which is his sole source of livelihood

13. That the Authorities have totally failed to attain to the said complaint dt.11/1/07 lodged by the Applicant and have neglected /oversighted the same

14. The Applicant again by its letter dt. 1/8/07 brought to the notice of the Village Panchayat of Oxel, the copy of which is marked to Town & Country Planning dept, Mapusa, and Mamlatdar of Bardez at Mapusa narrating the said facts all again and apprehended the danger of land sliding and soil erosion which will affect adversely to the cashew plantation existing in the property bearing Survey no.190/0 which is in his lawful possession as tenant

15. The Applicant in his letter dt.1/8/07 specifically mention that if the authorities failed to initiate immediate action against the said persons for the said illegal act of excavation and cutting of hill the Applicant will approach the High Court for the final remedy

16. The authorities even after the said reminder dt.1/8/07 failed to attend to the problem / complaint lodged by the Applicant and have intentionally oversighted, neglected and kept blind to the said illegal act of excavation and cutting of hill

17. The Applicant after failing to get the redress from the various authorities finally approach this Hon'ble court for the remedy hoping that he will get redress to his complaint

18. If the said work of excavation/cutting of hill which is still going on if not stopped and the persons responsible for the same are not penalized then it will set a bad precedent in years to come without any sort of fear before carrying out such similar illegal activities and the same will adversely affect the nature and environment severally

19. The said fact of excavation which resulted into land sliding was also reported /published in the daily Gomantak Times dt.22/6/07, the copy of which is relied herein and even after reports of the said fact the authorities remained silent on the same and thereby failed to perform their Mandatory duty and conduct the inquiry.

It is therefore prayed before this Hon'ble court that this Hon'ble court may hold or direct the enquiry and direct the authorities to initiate the action and the person responsible for the said illegal act be penalized in the interest of justice

Yours faithfully,

(Shri. Satish S Banaulikar)

PHOTOGRAPH NO I

PHOTOGRAPH NO II

PHOTOGRAPH NO III